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March 10, 1999



*BY HAND DELIVERY*

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: Petition for Reconsideration of GE American Communications, Inc., in MM Docket 93-25, *Implementation of Section 25 of the Cable Television Consumer and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations***

Dear Ms. Salas:

On behalf of GE American Communications, Inc. ("GE Americom"), please find an original and four (4) copies of a Petition for Reconsideration in the above-referenced proceeding. The Petition seeks reconsideration of that portion of the Commission's Report and Order implementing Section 335(b)(5)(A)(ii) of the Communications Act of 1934, as amended, 47 U.S.C. § 335(b)(5)(A)(ii), wherein the Commission determined that the public interest obligations imposed upon Direct Broadcast Satellite ("DBS") providers shall be borne by Part 25 fixed satellite service ("FSS") licensees directly rather then their programmer customers.

Please contact the undersigned directly if you have any questions. Thank you.

Respectfully submitted,

Ronnie London
Counsel for GE American Communications, Inc.

Enclosures

No. of Copies rec'd 0+4
List A B C D E

BEFORE THE

# FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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| In the Matter of | ) | |
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| Implementation of Section 25 of the | ) | MM Docket No. 93-25 |
| Cable Television Consumer | ) | |
| and Competition Act of 1992, | ) | |
| Direct Broadcast Satellite | ) | |
| Service Obligations | ) | |
| | ) | |
| Direct Broadcast Satellite | ) | |
| Public Interest Obligations | ) | |



## PETITION FOR RECONSIDERATION

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## EXECUTIVE SUMMARY

GE Americom asks that the Commission reconsider its decision to require FS licensees to meet DBS public service obligations when their customers use satellite capacity to distribute video programming to homes. This decision violates Section 335 of the Communications Act, which expressly imposes such obligations on "providers of direct broadcast satellite services." The common sense understanding of that term reaches parties actively engaged in the business of assembling packages of video channels and marketing those packages to end users. It does not reach spacecraft operators who have nothing to do with the programming business themselves.

The Commission has misread Section 335(b)(5)(A), which further defines the DBS "providers" subject to public service obligations. In subsection (A)(i) the Act reaches Part 100 DBS "licensees," a logical step because those licensees are expressly authorized to provide DTH programming. Separately, in subsection (A)(ii), the Act reaches "distributors" of DTH programming who use Ku-band FSS satellites. This provision is equally logical because Congress was aware that such a distributor competed directly in the marketplace with DBS licensees and that others might do so in the future.

The Commission, however, misreads subsection (A)(ii) and applies the public service obligations to FSS licensees who have nothing to do with the DTH business. The Commission reaches this result through an unreasonable reading of the Act's language, concluding that a party must be a Part 25 licensee to be covered.

But whether or not this view is correct (and we believe it is not), the Act clearly provides that the party at least must be (1) a "distributor," (2) who "controls a minimum number of channels, and (3) is "using" the channels "for the provision of video programming directly to the home."

The Commission cannot simply assume that when an FSS customer engages in DTH service, that activity somehow is attributed to the unaffiliated FSS licensee. It is the FSS customer who acts as a "distributor," who "controls" the use of the channels, and who "provides" DTH service to end users. In subsection (A)(ii) Congress was trying to avoid reaching FSS licensees, and instead reach entities that actually distribute programming in competition with DBS licensees. The *Order* here stands Congress's intent on its head.

The Commission's error creates serious anomalies. FSS licensees are not in a position to meet the DBS public interest obligations -- either the political broadcasting rules or the channel set-asides -- because they are not in the programming business in the first place. Furthermore, it is fundamentally unfair to impose obligations on FSS licensees based on a customer's independent decision to use satellite capacity for DTH purposes. The Commission's action creates substantial new burdens and costs, including jeopardy to FSS licenses, based on business activities in which FSS licensees do not participate.

The Commission appears to have reached this unreasonable construction of the Act in part because it believes that its does not have adequate jurisdiction over non-licensee FSS distributors. Rather, the *Order* does not suggest

that FSS satellite operators are in a position to meet the public interest obligations themselves. The *Order* effectively places FSS licensees in the role of surrogate policemen, with the apparent expectation that licensees will delegate their duties back to the DTH distributors, and rely on "certifications" from those distributors to demonstrate compliance.

The Commission fails to appreciate the costs and risks that this structure imposes on FSS licensees, burdens that are inconsistent with the plain meaning of the Act. Furthermore, the Commission disregards the mandate of the Act that it regulate the conduct of non-licensees in this area directly. The Commission should correct its *Order*, and focus its regulatory attention on the DTH "providers" that are the subject of Section 335.

**BEFORE THE**

# FEDERAL COMMUNICATIONS COMMISSION

**WASHINGTON, D.C.**

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| In the Matter of | ) | |
| | ) | |
| Implementation of Section 25 of the Cable Television Consumer and Competition Act of 1992, Direct Broadcast Satellite Service Obligations | ) | MM Docket No. 93-25 |
| | ) | |
| Direct Broadcast Satellite Public Interest Obligations | ) | |

To: The Commission

## PETITION FOR RECONSIDERATION

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, 1/ hereby seeks partial reconsideration of the Commission's *Report and Order* in the above-captioned proceeding. 2/ The Commission determined that when satellite customers use fixed satellite service ("FSS") capacity licensed under Part 25 to offer direct-to-home ("DTH") services, that action subjects the FSS licensee to the public interest obliga-

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1/ 47 C.F.R. § 1.106.

2/ *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992: Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, FCC 98-307, 1998 FCC LEXIS 6060 (Nov. 25, 1998) ("*Report and Order*" or "*Order*").

tions imposed by Section 335 of the Communications Act of 1934, as amended. 3/ This decision is inconsistent with the literal terms of the Act, as well as with the Act's objective of imposing such obligations on DTH multi-channel video distribution ("MVPD") services irrespective of the Ku-band satellite spectrum involved.

## INTRODUCTION

The *Report and Order* here contains a fundamental error. It imposes public interest program obligations on entities that have nothing to do with the creation or distribution of video programming -- Part 25 Ku-band FSS satellite operators -- rather than on those customers who actually use FSS satellites to provide DTH service.

This action violates the clear intent of Congress as expressed in Section 335 of the Communication Act. Congress recognized that FSS operators are fundamentally different from Part 100 Direct Broadcast Satellite ("DBS") licensees. The latter hold licenses expressly for the purpose of providing satellite-based program distribution themselves. In contrast, the business of FSS satellite operators like GE Americom is to develop, launch and operate spacecraft for use by others. Customers purchase the use of FSS transponder capacity and are free to transmit whatever telecommunications they wish so long as they do not cause interference. In that sense, FSS operators are more akin to the owners of fiber optic

3/ 47 U.S.C. § 335.

cables or other communications infrastructure. Our satellite facilities may be used by others for program distribution, but we are not engaged in that business.

The Commission nevertheless has decided that an FSS licensee will become subject to Section 335's obligations if one of its customers offers at least 25 DTH program channels. This action is arbitrary and unreasonable:

- Illogically, the obligations arise due to no action on the part of the FSS operator. If a customer decides to use capacity obtained from the operator for DTH, that *customer's* action triggers the *FSS licensee's* obligations. This is true whether the customer obtains the use of the FSS capacity directly from the operator, or instead has contracted with a satellite reseller one or more steps removed.

- Inefficiently, the obligations fall on a party with no infrastructure or ability to meet them, as FSS operators are not in the programming or DTH business.

- Unfairly, the obligations impose costs and uncertainties on the FSS operator that impact other non-DTH customers. The rules potentially could require the FSS operator to use satellite capacity without reimbursement to meet these obligations, increasing costs for satellite users as a whole. The rules could require FSS operators to reclaim capacity from non-DTH users to meet obligations. Worst case, the FSS operator's license could be at risk.

Significantly, none of these problems arise for Part 100 DBS licensees, for in their case the licensee and the program distributor are the same party. The licensee thus takes on the public interest obligations when it chooses to enter the DTH business, controls the scope of its obligations through its own business decisions, and has the ability to meet the obligations as part of its normal program operations.

The Commission does little to credibly defend the logic of its decision to impose the public interest obligations on FSS operators instead of program distributors. First, the Commission claims that its action is mandated by the terms

of Section 335 itself. However, the plain language of that section make clear that Congress was trying to *avoid* imposing the obligations on FSS operators. Rather, Congress sought to reach DTH distributors who use FSS satellites and put them on the same footing as the Part 100 DBS licensee-distributors with whom they compete. As discussed below, this interpretation of Section 335 is both the correct reading of the Act, and common sense as a matter of policy.

Another Commission argument is that FSS operators should be subject to Section 335 because the Commission's jurisdiction does not sufficiently reach FSS customers engaged in DTH programming. This rationale essentially places FSS operators in the role of policemen. We are told that we should delegate our program obligations to our customers, and then obtain "certification" from them that they are meeting these legal duties. If we fail to do so, our licenses are in jeopardy. The Commission ignores the costs and burdens associated with this approach. More importantly, the Commission misreads the Act, which expressly gives it direct jurisdiction over FSS customers engaged in DTH.

GE Americom is not trying to change the substantive public interest obligations established in the new rules, nor upset the competitive balance Congress sought by their adoption. 4/ But, if anything, those obligations will be better met if FSS licensees are not in the middle of the compliance chain. We ask the

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4/ *See, e.g.*, 138 Cong. Rec. S604-03, 605 (daily ed. Jan. 29, 1992) (statement of S. McCain) ("Only a fair, competitive [DBS] marketplace will eliminate the problems facing consumers in receiving video programming in the home.").

Commission to reconsider this element of its decision, and move the public interest obligations to FSS customer-distributors where they belong under Section 335.

## I. THE PLAIN MEANING OF SECTION 335 CLEARLY REACHES FSS CUSTOMERS, AND NOT FSS LICENSEES.

### A. The Two-Part Definition of DBS Service "Provider" Logically Tracks the Common Sense Understanding of Who Such Providers Are in the Market.

Section 335 instructs the Commission to impose certain public interest requirements upon "providers of direct broadcast satellite service." 5/ In turn, Section 335(b)(5)(A) expressly defines such a "provider" as either:

> (i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or
>
> (ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under Part 25 of title 47 of the Code of Federal Regulations. 6/

As GE Americom discussed in its Further Reply Comments in this proceeding, 7/ this two-part definition of a "DBS provider" is quite clear. Subsection (A)(i) reaches those DBS providers who hold Part 100 licenses that permit them to operate DBS satellites for the purpose of distributing their own DTH services.

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5/ 47 U.S.C. § 335(a).

6/ 47 U.S.C. § 335(b)(5)(A).

7/ Further Reply Comments of GE American Communications, Inc., in MM Docket No. 93-25, filed May 30, 1997.

Subsection (A)(ii) reaches those DBS providers who distribute programming over a minimum number of channels on a Ku-band FSS satellite.

The two-pronged definition of a "DBS provider" also comports with the way that DBS services are provisioned and marketed. At a common sense level, the DBS service customer on the street knows who the "DBS providers" are today: Primestar, DirecTV/USSB and Echostar. Congress was well aware that Primestar was using FSS capacity leased from a Part 25 FSS operator, while the other providers held their own DBS satellite licenses under Part 100. Congress also reasonably anticipated that other FSS customers in the future might also provide DTH services. Congress therefore wrote Subsection (5)(A) to ensure that both kinds of DBS providers were equally subject to Section 335's public interest obligations.

Finally, this interpretation comports with the respective roles of a DTH distributor FSS customer on the one hand, and an FSS satellite licensee on the other. This matter already has been discussed above. The FSS DTH distributor (like the Part 100 DBS licensee) is the logical party to bear these programming obligations because it is in the programming business. For example, the FSS distributor is in a position to meet the political broadcasting rules in the context of it own programming decisions. Conversely, FSS licensees have no nexus whatsoever to political broadcasting, and no ability to meet rules related to political advertising that, by definition, is integrated with other programming. FSS licensees have no relationship to the DTH channels with which non-commercial set-aside channels must be integrated and distributed. Most fundamentally, the DTH

distributor should bear these obligations because its business decisions -- to participate in the DTH market at the minimum channel level -- trigger the obligations in the first place. 8/

### B. The Act Does Not Support the Commission's Strained Interpretation.

In the *Order*, the Commission rejects the clear and logical reading of the Act described above. Instead, the Commission excuses companies using FSS capacity to offer DTH services, and imposes the obligations on FSS satellite licensees who have nothing to do with DTH except that their customer happens to use their satellite capacity for DTH purposes.

To reach this peculiar result, the Commission must strain the actual language of Subsection (A)(ii) in several ways. The *Order* minimizes Congress' use of the key word "distributor" at the beginning of this provision. The *Order* ignores the subsection's focus on the distributor's "control" of a "minimum number of channels." Most fundamentally, the *Order* disregards the common sense meaning of what it is to be a "provider of direct broadcast satellite service" -- the general term that Subsection (A)(ii) is intended to modify.

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8/ This interpretation also avoids a myriad of other practical problems related to the FSS licensee's lack of control over transmission content. As only one example, it would be absurd if whenever a customer assembled a package of transponders enabling it to distribute 25 channels (perhaps through transponder capacity obtained directly from the licensee, perhaps from reseller capacity, and perhaps taking advantage of compression or new data transmission technologies), that action suddenly could create costs and obligations affecting the licensee, its cost structure, its relationship with other customers and, ultimately, its satellite license.

The Commission's basic argument turns on the reference to "licensed under Part 25" in the final clause of Subsection (A)(ii). According to the *Order*, this language modifies all of the language that proceeds it, and therefore indicates that only Part 25 FSS satellite licensees are reached by this subsection. 9/

There are several answers to this attempt at statutory construction. First of all, even if the Commission were right that FSS customers are not reached by the statute, that does not explain why FSS licensees bear public interest obligations. The *Order* takes the position that a party must be a Part 25 licensee to be covered. But even if this reading is correct, that party also must be a (1) "distributor;" (2) "who controls a minimum number of channels;" and (3) be "using" the channels "for the provision of video programming directly to the home." All of these conditions appear before the words "and licensed under Part 25" at the end of the subsection.

The Commission essentially leaps to the result-oriented conclusion that if an FSS customer is offering DTH service, then that activity by definition means that the unaffiliated FSS licensee also is doing so, and therefore subjects the licensee to the DBS public interest obligations. But this construction does not meet

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9/ *Report and Order* at ¶ 20. The Commission also makes a related argument based on Section 335(b), that DBS providers must set aside channel capacity for a non-commercial use "as a condition of any provision, initial authorization, or authorization renewal." 47 U.S.C. § 335(b)(1). According to the *Order*, this language means that Congress expected DBS "providers" to hold an FCC license. However, the Commission disregards the fact that Section 335(b) reaches both "authorizations" and mere "provision" of service. This matter is discussed in more detail in Section II, *infra*.

reality. Once the FSS licensee provides satellite capacity to a customer, it does not "control" the use of those channels except in a technical sense; it is the customer who does so. It is the customer who "uses" the channels for DTH. And again, going back to the common sense definition of a "provider of directing broadcast satellite services," it is the FSS customer who is selling video programming service direct to end user homes.

The *Order* does not even attempt to come to terms with these business realities. Instead, as justification for its odd interpretation of Subsection (A)(ii), the Commission proffers that "[i]f Congress had meant to focus on the programmers, it could have said 'a Ku-band satellite . . . that is licensed . . . .'" 10/ In the first place, it is irrelevant what Congress "*could* have said." Section 335(b)(5)(A) clearly *does* say "licensee" in Subsection (A)(i) to reach licensees, and something *other than* "licensee" in Subsection (A)(ii) -- "distributor" -- to reach entities *other than licensees*. The Commission fails to come to grips with this central fact.

For that matter, to the extent it is relevant to surmise what Congress "could" have said, a more direct question is why the Commission did not refer directly to "a licensee for a Ku-band satellite under part 25 of the Act" using the same construction as in Subsection (A)(i). The most logical answer is that Congress was trying to *avoid* imposing the obligations on FSS licensees, and therefore was writing a new subpart aimed at DTH programmer customers of FSS licensees.

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10/ *Id.* at ¶ 21 (emphasis in original).

In all of these circumstances, there is only one reasonable interpretation of the "licensed under Part 25" language in Subsection (A)(ii). That clause modifies the prior reference to "Ku-band fixed service satellite system," emphasizing the distinction from the Ku-band systems licensed under Part 100. This makes perfect sense. The whole purpose of having two different subsections was to recognize that DBS licensees distribute video DTH, while FSS licensees do not.

In short, Subsection (A)(ii) clearly applies only if an entity is actively involved in DTH program distribution. If the Commission is determined to stand by its construction and conclude that the subsection applies only to Part 25 licensees, then the effect would be to narrow the scope of the provision. In that case, Subsection (A)(ii) would apply only to an entity that is *both* a distributor of DTH video programming itself, *and* a Part 25 licensee. 11/ GE Americom would not object to this reading of the statute, though we do not believe it matches Congress's intent. The result would be that no entity would fall under (A)(ii) today because no FSS operator is retaining for itself "control of a minimum number of channels" and "using" such channels itself to act as a "distributor" of video programming directly to the home." 12/ Perhaps some FSS licensee will choose to enter the DTH business

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11/ As the Commission seems to recognize, that Part 25 license could be an earth station authorization, and not a satellite authorization. *See Report and Order* at ¶ 32 (applying rules to DTH services distributed over foreign satellites). However, this construction would not reflect Congressional intent either unless the earth station licensee also met the core "distributor/control" components of the definition.

12/ Thus this interpretation makes the subsection a practical nullity. But if so, that only underscores the error of the Commission's interpretation of the final language regarding Part 25 licensing. It is well-settled that a statutory interpretation that leads to such an unreasonable result is simply not tenable.

in the future, using its own licensed facilities in the same way that DBS licensees do. But meanwhile, neither non-licensee DTH distributors, nor non-DTH distributor Ku-band licensees, would be covered by the Act.

Alternatively, the Commission can reconsider its decision and conclude that Subsection (A)(ii) reaches FSS customers engaged in DTH service. GE Americom submits that this construction of the statute is supported both by the plain meaning of the provision's words, and by the underlying policy goal of assuring uniform treatment of competing vendors of satellite video programming.

## II. CONTRARY TO ITS POSITION IN THE *ORDER*, THE COMMISSION POSSESSES THE NECESSARY JURISDICTION OVER DBS PROGRAMMERS TO ENFORCE THE PUBLIC INTEREST OBLIGATIONS.

Significantly, the Commission implicitly acknowledges that the FSS customer engaged in DTH is the appropriate party to bear the new public interest obligations. The Commission states that FSS licensees may delegate this duty to customers engaged in DTH, and then rely on certificates from such customers that the obligation is being met. 13/ However, this begs the question, all the more, why the Commission has strained the language of Section 335 to apply the obligations to FSS licensees in the first place.

The answer seems to lie in a misplaced view of jurisdiction. The Commission appears convinced that it has only limited authority over non-licensee

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*Wilson v. FCC*, 170 F.2d 793 (D.C. Cir. 1948) ("Unreasonable consequences [in the construction of a statute's provisions] should be avoided.").

13/ *Report and Order* at ¶ 26.

customers, and therefore has no effective means of enforcing the DBS obligations against them directly. The Commission appears to be twisting the language of Subsection (A)(ii) to put FSS operators into the role of policemen for the new rules. The Commission is applying the rules to FSS licensees with the expectation that we will apply them to our customers. 14/

GE Americom already has discussed why this action violates Section 335. We are not DTH distributors, so the obligations do not apply to us. That much is clear.

Nor is this a small, abstract matter for us. The Commission is asking us to meet obligations that we are not set up to handle. It is not enough to say that we can simply delegate these responsibilities. The Commission is establishing new issues between us and our customers, and new grounds for potential disputes, over programming issues with which we have no familiarity. We may face unexpected compliance costs of our own that would have to be recovered from other customers. We might even have to take satellite capacity from other customers for this

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14/ In this respect, the Commission analogizes to its implementation of the closed captioning provisions of the Act, 47 U.S.C. § 713 (requiring FCC to place the closed captioning obligations on "video program providers"), wherein the Commission adopted a similar certification procedure for providers to meet the statutory obligations. *Report and Order* at ¶ 26 (*citing Closed Captioning and Video Description of Video Programming*, 13 FCC Rcd 3272 (1997) ("*Closed Captioning Order*")). In the closed captioning context, however, the Commission had before it "legislative history [which] defines the term 'providers' to include the specific television station, cable operator, cable network or other service that provides programming to the public." *Closed Captioning Order* at ¶ 27. Conversely, in the context of the DBS public interest obligations, the Commission has before it a provision of the statute, Section 335(b)(5)(A)(ii), that *expressly* imposes Section 335's public interest obligations on *distributors*.

purpose. By definition our satellite licenses could be placed in jeopardy based on the conduct of our customers.

Congress recognized that FSS licensee should not be placed in the middle as policemen delegating and enforcing the public interest obligations against their customers. The whole purpose of subsection (A)(ii) is to give the Commission direct jurisdiction over FSS customers who distribute DTH even where the customers are not licensees. Congress clearly has the ability to confer broad jurisdiction upon the Commission over any aspect of interstate commerce in communications. 15/ DTH programming offered over satellite systems -- whether under Part 25 or Part 100 -- is clearly encompassed in the term "interstate commerce." 16/ As such, Congress is free to amend the Act to include provisions that contemplate regulation and/or enforcement of actions by non-licensees affecting interstate commerce.

This is exactly what Congress did in adopting Section 335(b)(5)(A)(ii) when it defined an FSS customer offering DTH as a "provider." Similarly, Section 335(b)(1) requires that channel capacity set asides be employed by the Commission "as a condition of any provision, initial authorization or authorization renewal for a

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15/ *See, e.g., National Broadcasting Co. v. United States*, 319 U.S. 190, 217 (1943) ("Congress endowed the Communications Commission with comprehensive powers to promote and realize the vast potentialities of radio").

16/ *Cf., Earth Satellite Communications, Inc.*, 95 F.C.C.2d 1223, ¶ 17 (1983) ("program signals transmitted and the communications satellites that provide these signals to receive the station of a [satellite master antenna television] system are inherently interstate in nature").

provider of direct broadcast satellite service providing video programming." 17/ Admittedly, the FSS customer-distributor may not have a license that could be revoked for non-compliance. But the Commission has other remedies it can use in an enforcement proceeding, including forfeitures and cease-and-desist orders. In egregious cases the Commission can take action to prevent the FSS customer-distributor from continuing the "provision" of DTH service. It does not need the FSS licensee to stand in the middle as surrogate policeman.

The Commission overlooks similar provisions in the Act where Congress has empowered it to enforce statutory obligations against entities that do not hold FCC licenses or authorizations. For example, Section 223(b)(5)(B)(ii) authorizes the Commission to enforce the Act's prohibition against obscene or indecent phone calls by imposing forfeitures. Section 223 imposes liability directly on callers using the interstate public switched telephone network ("PSTN") to make such calls, and not solely upon the carriers that provide the facilities or services that enable offenders to use the PSTN to do so. Similarly, the proper reading of Section 335(b)(5)(A)(ii) provides the Commission with the power to enforce public interest obligations against programmers -- the entities that use FSS facilities and services in a manner that triggers the Section 335 obligations -- rather than the purveyor of the FSS facilities used for doing so. 18/ Contrary to the Commission's

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17/ 47 U.S.C. § 335(b)(1) (emphasis added).

18/ Section 223 is not unique in this regard -- other sections of the Act accord the with Commission jurisdiction to employ its enforcement powers over non-licensees whose services are intertwined with FCC-licensed or -regulated services. Section 224 of the Act, 47 U.S.C. § 224, for example, gives the Commission plenary

protestations in the *Order*, the Commission has sufficient authority to effectively enforce Section 335's public interest requirements against programmers.

## CONCLUSION

FSS licensees are fundamentally different from DBS licensees. FSS licensees are not in the program distribution business -- they are in the "communications capacity" business. Just as it would be ill-advised to turn other purveyors of communications capacity, such as owners of fiber optic facilities, wireless telecommunications systems, and landline telephone networks, into content-regulators, the Commission's attempt to do so with FSS licensees is equally unwise.

Congress recognized this distinction between DBS and FSS licenses, and sensibly placed the public interest obligations of Section 335 on DTH programmers under both Sections 335(b)(5)(A)(i) and (A)(ii). The Commission's misinterpretation of the latter violates the policy objectives -- and the overwhelming logic -- of Congress' efforts.

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authority over the rates, terms and conditions that utilities -- including those that offer no FCC-regulated communication services by wire or radio -- impose upon providers of communication services pursuant to FCC licenses and/or authorizations. *See, e.g., Mile Hi Cable Partners v. Public Svc. Co. of Colorado*, FCC 99-22, Memorandum Opinion and Order, ¶¶ 7, 12-13 (rel. Feb. 22, 1999).

The Commission has also been notably effective of late in its enforcement efforts under Section 301 of the Act, 47 U.S.C. § 301 (requiring FCC licensing for all operations using radio frequencies), even though such enforcement efforts are almost always, by definition, against those that hold no FCC license or authorization.

For the foregoing reasons, GE American respectfully requests that the Commission reconsider its interpretation of Section 335(b)(5)(A)(ii) and modify its regulations to place Section 335's public interest obligations where they belong -- on the DTH video programming distributors whose activities trigger the obligations in the first place.

Respectfully submitted,

GE AMERICAN COMMUNICATIONS, INC.

By: _____

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March 10, 1999